IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
NOTICE OF MOTION NO.3756 OF 2007
IN
SUIT NO.1592 OF 1997

Bank of Baroda ..Plaintiff.
Vs.
Goldie Purshottam Sud ..Defendant.
and
Punjab and Maharashtra Co-operative
Bank Ltd. ..Applicant.

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Mr. Kiran Nikam i/b S. Ashwinikumar & Co. for the Plaintiff.
Mr. B.H. Prasad Sharma for the Applicant.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**
28th November, 2007.

P.C. :

1. The suit has been instituted by the Bank of Baroda some time in the year 1997 for the recovery of an amount of Rs.4,16,867/- together with interest. The Plaintiff has claimed that there was an equitable mortgage by deposit of title deeds created by the Defendant in respect of unit No.1, Building No.15, Samhita Warehousing Complex, Village Mohili, Off Andheri- Kurla Road, Mumbai 400 072. By an order dated 1st September, 1998 the Court Receiver came to be appointed as Receiver of the aforesaid unit. Evidently the Defendant has not applied for being appointed as agent of the Court Receiver. In the meantime, Notice of Motion

3756 of 2007 has been taken out by the Punjab and Maharashtra Co-operative Bank Limited which claims that the Defendant is indebted to the Applicant in the total sum of Rs.40,71,005/- upon which interest has been claimed. The Applicant bank also claims a mortgage in its favour by deposit of title deeds as evidenced by a Memorandum dated 14th July, 1998. It has been stated that an agreement to sell entered into by the Defendant was deposited with the Applicant bank. A reply has been filed by the Plaintiff in which it has been stated that the original title deeds are in the possession of the Plaintiff and consequent upon a memorandum dated 24th May, 1994 the Plaintiff holds a prior mortgage.

2. The Applicant bank has taken recourse to proceedings under the Securitization Act 2002 by issuing a notice under Section 13(2) and thereupon taking possession under Section 13(4). The property as already noted is in the possession of the Court Receiver in pursuance of the order passed by this Court on 1st September, 1998.

3. At the present stage, counsel for the Applicant seeks a direction that the Court Receiver may proceed to sell the property and that the balance of the sale proceeds, after meeting the

liabilities of the Plaintiff may be paid over to the Applicant to meet its claim. The Defendant has filed an affidavit in reply to the Notice of Motion but has failed to appear at the hearing. Learned counsel for the Plaintiff agrees to the suggestion that the property be sold by the Receiver.

4. In the circumstances, it would be appropriate to direct that the Receiver may proceed to sell the property which is mortgaged in favour of the Plaintiff. For the aforesaid purpose, the Receiver shall place a report seeking appropriate directions in that behalf. The Receiver shall also seek appropriate directions in regard to disbursing the liabilities of the Plaintiff on the one hand and the Applicant (Punjab & Maharashtra Co-operative Bank Ltd.). The Applicant would be at liberty to register its claim with the Court Receiver. Notice of the report shall be furnished to the Applicant by the Court Receiver. In the circumstances, counsel appearing for the Applicant does not seek any further relief in the Motion. The Notice of Motion is accordingly disposed of.